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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,729	07/02/2003	Kevin T. Chan	14227US01	5781
23446 7590 08/16/2007 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			EXAMINER DAVENPORT, MON CHERI S	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 08/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/612,729

Applicant(s)

CHAN, KEVIN T.

Examiner

Mon Cheri S. Davenport

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See continuation.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

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SUPERVISORY PATENT EXAMINER 8114107  
TECHNOLOGY CENTER 2600

*Continuation*

1. Applicant's arguments filed July 31, 2007 have been fully considered but they are not persuasive.
2. Applicant argues that Bontemps does not disclose or suggest the limitation selecting any one channel from all existing channels(*see figure 2, element 202, port1-N*) (*see column 3, lines 58-61*); and  
  
assigning said selected any one channel to said any one media pair(*see column 3, lines 58-62, A control circuit is provided that toggles the selected circuit between the first and second states until a link detect signal indicates the reception of communication signals. The control circuit holds the select circuit in the particular state in which valid communication signals were detected*).

A further explanation of figure 2 (figure 2 is the device as a whole, section 200, automatic media detection circuit) (see col. 7, lines 19-37, and col. 3, lines 44-65). The automatic media detection circuit, establishes a working communication link, the working communication channel is selected from all existing channels, and communication is established, meaning that the channel is assigned and connected to a media pair (figure 2, section 204a, and 204b, are the media contact pairs).

3. In response, the Examiner respectfully disagrees and draws attention to the fact that Bontemps teaches that the control circuit determines which media pair (*see column 3, lines 58-62, A control circuit is provided that toggles (determines) the selected circuit between the first and second states (media pairs) until a link detect signal indicates the reception of communication signals (from all existing media pairs). The control circuit holds the select*

*circuit in the particular state in which valid communication signals were detected*

*(determination of the one usable media pair)). (See figure 2, element 220a and 220b, contact pair) (see abstract, lines 1-3).* See also Figure 2, the control circuit decides which usable media pair is selected from the plurality of ports as shown.

4. In response to the argument that the each PHY device 218 in Fig. 2 of Bontemps is connected to only one RX/TX pair, it is noted that the PHY 218 device has more than one ports (PORT1-N) and the media pairs are shown in the figure, figure 2 as a whole is an automatic media detection circuit.